

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DALE GARCIA and JANA
ARCHAMBEAU, husband and wife,

Plaintiffs,

v.

THOMAS BENENATI and LORETTA
BENENATI, husband and wife and the
marital community thereof; RYAN
LAYTON and JANE DOE LAYTON,
husband and wife and the marital
community thereof; ROBERT INGRAM
and JANE DOE INGRAM, husband and
wife and the marital community thereof;
HEATH YATES and JANE DOE YATES,
husband and wife and the marital
community thereof; MATT NILES and
JANE DOE NILES, husband and wife and
the marital community thereof; STATE OF
WASHINGTON; WASHINGTON STATE
PARKS AND RECREATION
COMMISSION; JOHN and JANE DOES 1-
20 and the marital communities thereof, and
ABC CORPORATIONS 1-10,

Defendants.

No. 3:19-cv-05597-BHS

DEFENDANTS' ANSWER TO
COMPLAINT FOR DAMAGES

DEMAND FOR JURY

Come now, Defendants Thomas Benenati and Loretta Benenati, husband and wife
and the marital community thereof; Ryan Layton and Jane Doe Layton, husband and wife
and the marital community thereof; Robert Ingram and Jane Doe Ingram, husband and wife

DEFENDANTS' ANSWER TO COMPLAINT FOR
DAMAGES - 1
3:19-cv-05597-BHS

1039-00012/445600

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1 and the marital community thereof; Heath Yeats and Jane Doe Yeats (not “Yates” as
2 mistakenly listed in the caption), husband and wife and the marital community thereof;
3 Matt Niles and Jane Doe Niles, husband and wife and the marital community thereof; State
4 of Washington; and Washington State Parks and Recreation Commission, and in answer to
5 Plaintiffs' *Complaint for Damages for Violation of Civil Rights and Pendent State Law*
6 *Claims* admits, denies and alleges as follows:

7 Unless specifically admitted herein, Defendants deny each and every allegation in
8 Plaintiffs' *Complaint for Damages*.

9 **I. JURY DEMAND**

10 1.1 Paragraph 1.1 of Plaintiffs' *Complaint for Damages* does not contain factual
11 averments to which a response is required, and as such is denied.

12 **II. JURISDICTION AND VENUE**

13 2.1 Defendants deny the allegations contained in paragraph 2.1 of Plaintiffs'
14 *Complaint for Damages*.

15 **III. PARTIES**

16 3.1 Defendants are without knowledge sufficient to form a belief as to the truth
17 of the allegations contained in paragraph 3.1 of Plaintiffs' *Complaint for Damages* and,
18 therefore, deny the same.

19 3.2 Defendants are without knowledge sufficient to form a belief as to the truth
20 of the allegations contained in paragraph 3.2 of Plaintiffs' *Complaint for Damages* and,
21 therefore, deny the same.

22 3.3 Defendants deny the allegations contained in paragraph 3.3 of Plaintiffs'
23 *Complaint for Damages*.

24 3.4 Defendants admit the allegations contained in paragraph 3.4 of Plaintiffs'
25 *Complaint for Damages*.

26 3.5 Defendants deny the allegations contained in paragraph 3.5 of Plaintiffs'
27

1 *Complaint for Damages.*

2 3.6 Defendants deny the allegations contained in paragraph 3.6 of Plaintiffs'
3 *Complaint for Damages.*

4 3.7 Defendants admit the allegations contained in paragraph 3.7 of Plaintiffs'
5 *Complaint for Damages.*

6 3.8 Defendants admit the allegations contained in paragraph 3.8 of Plaintiffs'
7 *Complaint for Damages.*

8 3.9 Defendants deny the allegations contained in paragraph 3.9 of Plaintiffs'
9 *Complaint for Damages.*

10 3.10 Defendants admit the allegations contained in paragraph 3.10 of Plaintiffs'
11 *Complaint for Damages.*

12 3.11 Defendants deny the allegations contained in paragraph 3.11 of Plaintiffs'
13 *Complaint for Damages.*

14 3.12 Defendants deny the allegations contained in paragraph 3.12 of Plaintiffs'
15 *Complaint for Damages.*

16 3.13 Defendants admit the allegations contained in paragraph 3.13 of Plaintiffs'
17 *Complaint for Damages.*

18 3.14 Defendants admit the allegations contained in paragraph 3.14 of Plaintiffs'
19 *Complaint for Damages.*

20 3.15 Defendants deny the allegations contained in paragraph 3.15 of Plaintiffs'
21 *Complaint for Damages.*

22 3.16 Defendants admit the allegations contained in paragraph 3.16 of Plaintiffs'
23 *Complaint for Damages.*

24 3.17 Defendants admit that the Washington State Parks and Recreation
25 Commission is a seven-member quasi-legislative citizen commission that provides policy
26 direction for the agency, and deny the remainder of the allegations contained in paragraph
27

1 3.17 of Plaintiffs' *Complaint for Damages*.

2 3.18 Defendants admit that the State of Washington is a sovereign state, and deny
3 the remainder of the allegations contained in paragraph 3.18 of Plaintiffs' *Complaint for*
4 *Damages*.

5 3.19 Defendants deny the allegations contained in paragraph 3.19 of Plaintiffs'
6 *Complaint for Damages*.

7 3.20 Defendants are without knowledge sufficient to form a belief as to the truth
8 of the allegations contained in paragraph 3.20 of Plaintiffs' *Complaint for Damages* and,
9 therefore, deny the same.

10 3.21 Defendants admit that Plaintiffs presented a Claim for Damages on or about
11 December 6, 2018 to the Office of Risk Management of the Department of Enterprise
12 Services and that more than sixty days has elapsed since that time, and deny the remainder
13 of the allegations contained in paragraph 3.21 of Plaintiffs' *Complaint for Damages*.

14 **IV. FACTS**

15 Defendants deny the allegations contained in the introductory unnumbered
16 paragraph of Section IV. of Plaintiffs' *Complaint for Damages*.

17 4.1 Defendants deny the allegations contained in paragraph 4.1 of Plaintiffs'
18 *Complaint for Damages*.

19 4.2 Defendants deny the allegations contained in paragraph 4.2 of Plaintiffs'
20 *Complaint for Damages*.

21 4.3 Defendants are without knowledge sufficient to form a belief as to the truth
22 of the allegations contained in paragraph 4.3 of Plaintiffs' *Complaint for Damages* and,
23 therefore, deny the same.

24 4.4 Defendants deny the allegations contained in paragraph 4.4 of Plaintiffs'
25 *Complaint for Damages*.

26 4.5 Defendants deny the allegations contained in paragraph 4.5 of Plaintiffs'

1 *Complaint for Damages.*

2 4.6 Defendants deny the allegations contained in paragraph 4.6 of Plaintiffs'
3 *Complaint for Damages.*

4 4.7 Defendants deny the allegations contained in paragraph 4.7 of Plaintiffs'
5 *Complaint for Damages.*

6 4.8 Defendants are without knowledge sufficient to form a belief as to the truth
7 of the allegations contained in paragraph 4.8 of Plaintiffs' *Complaint for Damages* and,
8 therefore, deny the same.

9 4.9 Defendants deny the allegations contained in paragraph 4.9 of Plaintiffs'
10 *Complaint for Damages.*

11 4.10 Defendants deny the allegations contained in paragraph 4.10 of Plaintiffs'
12 *Complaint for Damages.*

13 **V. LIABILITY AND CAUSES OF ACTION**

14 5.1 Defendants deny the allegations contained in paragraph 5.1 of Plaintiffs'
15 *Complaint for Damages.*

16 5.2 Defendants deny the allegations contained in paragraph 5.2 of Plaintiffs'
17 *Complaint for Damages.*

18 5.3 Defendants admit the allegations contained in paragraph 5.3 of Plaintiffs'
19 *Complaint for Damages.*

20 5.4 Defendants deny the allegations contained in paragraph 5.4 of Plaintiffs'
21 *Complaint for Damages.*

22 5.5 Defendants deny the allegations contained in paragraph 5.5 of Plaintiffs'
23 *Complaint for Damages.*

24 5.6 Defendants deny the allegations contained in paragraph 5.6 of Plaintiffs'
25 *Complaint for Damages.*

26 5.7 Defendants deny the allegations contained in paragraph 5.7 of Plaintiffs'

1 *Complaint for Damages.*

2 5.8 Defendants deny the allegations contained in paragraph 5.8 of Plaintiffs'

3 *Complaint for Damages.*

4 5.9 Defendants deny the allegations contained in paragraph 5.9 of Plaintiffs'

5 *Complaint for Damages.*

6 5.10 Defendants deny the allegations contained in paragraph 5.10 of Plaintiffs'

7 *Complaint for Damages.*

8 5.11 Defendants deny the allegations contained in paragraph 5.11 of Plaintiffs'

9 *Complaint for Damages.*

10 5.12 Defendants deny the allegations contained in paragraph 5.12 of Plaintiffs'

11 *Complaint for Damages.*

12 5.13 Defendants deny the allegations contained in paragraph 5.13 of Plaintiffs'

13 *Complaint for Damages.*

14 5.14 Defendants deny the allegations contained in paragraph 5.14 of Plaintiffs'

15 *Complaint for Damages.*

16 5.15 Defendants deny the allegations contained in paragraph 5.15 of Plaintiffs'

17 *Complaint for Damages.*

18 5.16 Defendants deny the allegations contained in paragraph 5.16 of Plaintiffs'

19 *Complaint for Damages.*

20 5.17 Defendants deny the allegations contained in paragraph 5.17 of Plaintiffs'

21 *Complaint for Damages.*

22 5.18 Defendants deny the allegations contained in paragraph 5.18 of Plaintiffs'

23 *Complaint for Damages.*

24 **VI. DAMAGES**

25 6.1 Defendants deny the allegations contained in paragraph 6.1 of Plaintiffs'

26 *Complaint for Damages.*

6.2 Defendants deny the allegations contained in paragraph 6.2 of Plaintiffs' *Complaint for Damages*.

VII. PRAYER FOR RELIEF

7.1 Defendants deny the allegations contained in paragraph 7.1 of Plaintiffs' *Complaint for Damages*.

7.2 Defendants deny the allegations contained in paragraph 7.2 of Plaintiffs' *Complaint for Damages*.

7.3 Defendants deny the allegations contained in paragraph 7.3 of Plaintiffs' *Complaint for Damages*.

DEMAND FOR JURY

Pursuant to Fed.R.Civ.P. 38, Defendants hereby demand that this matter be tried to a jury of six or more persons.

AFFIRMATIVE DEFENSES

BY WAY OF FURTHER ANSWER AND FIRST AFFIRMATIVE DEFENSE, Defendants allege that Plaintiffs' claims are precluded by the doctrine of qualified immunity.

BY WAY OF FURTHER ANSWER AND SECOND AFFIRMATIVE DEFENSE, Defendants allege that Plaintiffs' claims are precluded by the doctrine of legislative immunity.

BY WAY OF FURTHER ANSWER AND THIRD AFFIRMATIVE DEFENSE, Defendants allege this action is barred by the Eleventh Amendment to the U.S. Constitution as regards the State of Washington and the Washington State Parks and Recreation Commission.

1 BY WAY OF FURTHER ANSWER AND FOURTH AFFIRMATIVE DEFENSE,
2 Defendants allege that neither the State of Washington and the Washington State Parks and
3 Recreation Commission is a "person" under 42 USC § 1983.

4 BY WAY OF FURTHER ANSWER AND FIFTH AFFIRMATIVE DEFENSE,
5 Defendants allege that the Plaintiffs have failed to state a claim upon which relief may be
6 granted.

7 BY WAY OF FURTHER ANSWER AND SIXTH AFFIRMATIVE DEFENSE,
8 Defendants allege that the injuries and damages, if any, claimed by the Plaintiffs were
9 proximately caused or contributed to by the fault of Plaintiffs.

10 BY WAY OF FURTHER ANSWER AND SEVENTH AFFIRMATIVE
11 DEFENSE, Defendants allege that if Plaintiffs suffered any damages, recovery therefor is
12 barred by Plaintiffs' failure to mitigate said damages.

13 BY WAY OF FURTHER ANSWER AND EIGHTH AFFIRMATIVE EIGHT
14 DEFENSE, Defendants allege that the summons and complaint were never properly served
15 upon Defendants or that the process served was insufficient.

16 BY WAY OF FURTHER ANSWER AND NINTH AFFIRMATIVE DEFENSE,
17 Defendants allege that Plaintiffs' action is barred because they were under the influence of
18 an intoxicating liquor or drug at the time of the occurrence causing the alleged injuries and
19 that such condition was a proximate cause of the alleged injuries. RCW 5.40.060.

20 BY WAY OF FURTHER ANSWER AND TENTH AFFIRMATIVE DEFENSE,
21 Defendants allege that Plaintiffs' action is barred because they were engaged in the
22 commission of a felony at the time of the occurrence causing the alleged injuries and the
23 felony was a proximate cause of the alleged injuries. RCW 4.24.420.

24 BY WAY OF FURTHER ANSWER AND ELEVENTH AFFIRMATIVE
25 DEFENSE, Defendants allege that Loretta Benenati was not married to Tom Benenati at the
26 time of the incident and is an improper Defendant.

PRAYER FOR RELIEF

WHEREFORE, Defendants THOMAS BENENATI AND LORETTA BENENATI, HUSBAND AND WIFE AND THE MARITAL COMMUNITY THEREOF; RYAN LAYTON AND JANE DOE LAYTON, HUSBAND AND WIFE AND THE MARITAL COMMUNITY THEREOF; ROBERT INGRAM AND JANE DOE INGRAM, HUSBAND AND WIFE AND THE MARITAL COMMUNITY THEREOF; HEATH YATES AND JANE DOE YATES, HUSBAND AND WIFE AND THE MARITAL COMMUNITY THEREOF; MATT NILES AND JANE DOE NILES, HUSBAND AND WIFE AND THE MARITAL COMMUNITY THEREOF; STATE OF WASHINGTON; and WASHINGTON STATE PARKS AND RECREATION COMMISSION pray for the following relief:

1. That Plaintiffs' complaint be dismissed with prejudice, and that Plaintiffs take nothing by their complaint;
2. That Defendants be allowed its statutory costs and reasonable attorney fees incurred herein under 42 U.S.C. §1988, 28 U.S.C. §1927, and RCW 4.85.185; and,
3. For such additional relief the Court may deem just and equitable.

DATED this 13th day of August 2019.

KEATING, BUCKLIN & McCORMACK, INC., P.S.

By: /s/ Stewart A. Estes
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CERTIFICATE OF SERVICE

I hereby certify that on the below date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

N/A.

DATED: August 13, 2019

/s/ Stewart A. Estes

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